

REMARKS

Favorable consideration and allowance are respectfully requested for claims 1-5 and 9-15 in view of the foregoing amendments and the following remarks.

The Office Action dated June 12, 2003, (the "Office Action") indicated that the claims in Group I, claims 1-5, and Group II, claims 9-15, did not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the claims lack the same or corresponding special technical features.

Responsive to the restriction requirement, Applicant hereby provisionally elects Group I, Claims 1-5, drawn to certain DNA fragments and plasmids thereof. This provisional election is made with traverse, it being submitted that the distinguishing features of the two groups of claims are sufficiently related that they should be examined and allowed in a single application. Applicant respectfully requests reconsideration and withdrawal of the restriction requirement under 37 C.F.R. § 1.143.

Applicant submits that the restriction requirement violates the unity of invention guidelines of the PCT because the methods of the claims of Group II are specially adapted to use of the DNA of the claims of group I. The Office Action indicates that the "technical feature of Group I relies on the structural features of the portion of the *S. galilaeus* genome noted." See the Office Action at page 3. The Office Action also indicates that this does not add to the prior art "since a large portion of the gene cluster from *S. galilaeus* is disclosed in Fujii et

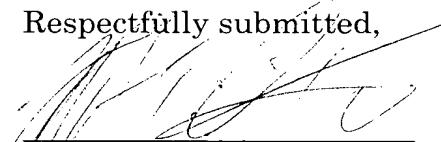
al. (Anthracycline Biosynthesis in *Streptomyces galilaeus*. Chem. Rev. (1997) 97:2511-2523." See the Office Action at page 3. Applicant respectfully submits that the portions of the gene cluster claimed in Group I differ from those disclosed by the Fujii reference. The portions of the gene cluster claimed in Group I are from entirely different segments of the gene cluster, in comparison with those disclosed by the Fuji reference. Consequently, the features of the portions of the genome claimed in Group I do add to the prior art and there can be no question that the claims do recite a special technical feature. The claims of Group II share this special technical feature. For at least the foregoing reasons, the restriction requirement should be withdrawn.

CONCLUSION

In view of the foregoing, the application is respectfully submitted to be in condition for allowance, and prompt favorable action thereon is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket No. 029381.49884US).

Respectfully submitted,

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